

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON WAYS AND
MEANS, UNITED STATES HOUSE
OF REPRESENTATIVES,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF THE TREASURY, *et al.*

Defendants,

DONALD J. TRUMP, *et al.*,

Defendant-Intervenors.

No. 1:19-cv-1974 (TNM)

**DEFENDANTS' AND DEFENDANT-INTERVENORS' RESPONSE
TO PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants and Defendant-Intervenors respectfully submit the following response to the Notice of Supplemental Authority filed by Plaintiff Committee on Ways and Means concerning the decision in *Committee on the Judiciary v. McGahn*, No. 19-2379 (KBJ), 2019 WL 6312011 (D.D.C. Nov. 25, 2019). *See* ECF No. 75.

As Plaintiff accurately observes, the *McGahn* decision rejected several threshold arguments that Defendants and Defendant-Intervenors have also presented in this case. These include the arguments (1) that suits by Congress against the Executive Branch seeking to enforce informational demands do not present a case or controversy under Article III; (2) that suits by Congress against the Executive Branch seeking to enforce informational demands do not fall within the jurisdictional grant of 28 U.S.C. § 1331; and (3) that there is not an implied cause of action under Article I for Congress to enforce its informational demands against the Executive Branch in federal court.

The Executive Branch disagrees with the *McGahn* decision and has filed a notice of appeal to the D.C. Circuit. On November 27, 2019, the D.C. Circuit administratively stayed the district court's *McGahn* decision and entered an expedited schedule pursuant to which oral argument will be held on January 3, 2020. *See* Ex. A (D.C. Circuit Order). Given the overlapping threshold questions in the *McGahn* litigation and this case, any decision by the D.C. Circuit in the *McGahn* case is likely to be highly relevant to this Court's resolution of the pending motion to dismiss.

Dated: December 3, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

JAMES M. BURNHAM
Deputy Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director

JAMES J. GILLIGAN
Special Litigation Counsel

/s/ Steven A. Myers
STEVEN A. MYERS (NY Bar No. 4823043)
SERENA M. ORLOFF (CA Bar No. 260888)
ANDREW BERNIE (DC Bar No. 995376)
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
P.O. Box 883
Washington, D.C. 20044
Tel: (202) 305-0648
Fax: (202) 305-8470
Email: Steven.A.Myers@usdoj.gov

Attorneys for Defendants

/s/ William S. Consovoy

William S. Consovoy (D.C. Bar #493423)
Cameron T. Norris
Steven C. Begakis
CONSOVOY MCCARTHY PLLC

1600 Wilson Boulevard, Suite 700
Arlington, VA 22209
(703) 243-9423
will@consovoymccarthy.com

Patrick Strawbridge
CONSOVOY MCCARTHY PLLC
Ten Post Office Square, 8th Floor
South PMB #706
Boston, Massachusetts 02109
(617) 227-0548

Attorneys for Defendant-Intervenors

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-5331

September Term, 2019

1:19-cv-02379-KBJ

Filed On: November 27, 2019

Committee on the Judiciary of the United
States House of Representatives,

Appellee

v.

Donald F. McGahn, II,

Appellant

BEFORE: Henderson, Rogers, and Griffith, Circuit Judges

ORDER

Upon consideration of the emergency motion for stay pending appeal and for an immediate administrative stay pending disposition of the stay motion, it is

ORDERED that the district court's order filed November 25, 2019, be administratively stayed pending further order of this court. The purpose of this administrative stay is to give the court sufficient opportunity to consider the appeal and should not be construed in any way as a ruling on the merits of either the motion for stay pending appeal or the appeal. See D.C. Circuit Handbook of Practice and Internal Procedures 33 (2018). It is

FURTHER ORDERED, on the court's own motion, that the parties brief the merits of this appeal pursuant to the following schedule:

Brief of Appellant	Monday, December 9, 2019
Appendix	Monday, December 9, 2019
Brief of Appellee	Monday, December 16, 2019
Reply Brief of Appellant	Thursday, December 19, 2019

The parties are directed to file their briefs and appendix and hand deliver the paper copies to the Clerk's Office by 4:00 p.m. on the date due. It is

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-5331

September Term, 2019

FURTHER ORDERED that oral argument be scheduled before this panel at 9:30 a.m. on Friday, January 3, 2020.

All issues and arguments must be raised by appellant in the opening brief. The court ordinarily will not consider issues and arguments raised for the first time in the reply brief.

To enhance the clarity of their briefs, the parties are urged to limit the use of abbreviations, including acronyms. While acronyms may be used for entities and statutes with widely recognized initials, briefs should not contain acronyms that are not widely known. See D.C. Circuit Handbook of Practice and Internal Procedures 41 (2018); Notice Regarding Use of Acronyms (D.C. Cir. Jan. 26, 2010).

All briefs and appendices must contain the date that the case is scheduled for oral argument at the top of the cover. See D.C. Cir. Rule 28(a)(8).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk